IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No. 662 of 2000

Date of Decision : 23.10.2007

State of H. P. …Appellant.

Versus:

Ramesh Kumar and others …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. V. K. Verma, Addl. A. G.

For the respondents : Mr. Surinder Saklani, Advocate vice Mr. Ajay Sharma, Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 5.2.2000 passed by the Judicial Magistrate Ist Class, Nurpur, Distt. Kangra, in Criminal Case No.1-2/94, titled as State v. Ramesh Kumar and others, acquitting the accused of the charged offence under sections 325 & 342 read with Section 34 of the Indian Penal Code.

On the basis of the statement (mark 'X') of Shri Budhi Singh (PW-5), FIR (Ext.M-1) dated 10.9.1999 was registered with Police Station, Nurpur, Distt. Kangra under

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Sections 323 & 342 read with Section 34 IPC. As per the case of the prosecution, accused No.1 & 2 gave beatings to PW-5 with fist blows and accused No.3 who is the brother of PW-5 tied him with rope and snatched the bamboo which he was carrying. Complainant's wife also came at the spot and she was also beaten by the said accused persons. Pardhan Harbans Lal, Lambardar Beli Ram and Up-Pradhan Dharam Singh after reaching the spot, intervened and rescued the complainant. The matter was investigated and the material documents were taken into possession by the Investigating Officer. In the present case, the injured was not got medically examined by the police but he himself got examined from Dr. A. K. Mahajan (PW-1). However, his Medico Legal Certificate was taken into possession by the police which is Ext.PW-1/A. The rope Ext.P-1 was recovered vide recovery memo Ext.PW-2/A. The statements of the witnesses were recorded and after completion of the investigation, the challan was presented in the Court for trial.

The accused were charged for the offences under Sections 325 & 342 read with Section 34 IPC and in order to prove its case, the prosecution examined 6 witnesses and inspite of various opportunities the remaining witnesses were not examined. Statement of the accused u/s 313 Cr.PC was also recorded.

After examining the material on record as also the depositions of the witnesses, the Court below came to the

conclusion that the prosecution had failed to prove its case beyond reasonable doubt. The independent witnesses, namely, Shri Dharam Chand (PW-2) and Shri Harbans Lal (PW-3) turned hostile and also did not support the case of the prosecution. Further, there was material on record to show that the dispute pertained to a passage over land which fell into the share of accused Karam Singh.

I have perused the material on record and also the statements of the witnesses. In order to prove its case, prosecution examined 6 witnesses. Dr. A. K. Mahajan (PW-1) has testified the injuries on the person of Shri Budhi Singh (PW-5). Shri Dharam Chand (PW-2) and Shri Harbans Lal (PW-3) are the only independent witnesses who have turned hostile and not supported the case of the prosecution at all. ASI Bhagwan Singh (PW-4) is the police official who registered the FIR Ext.M-1. Shri Budhi Singh (PW-5) is the complainant and Smt. Mahindro Devi (PW-6) is his wife.

Through the testimony of PW-1, undoubtedly injuries suffered by PW-5 both simple and grievous have been proved. However, in the absence of any independent witnesses, statements of PW-5 & PW-6 need to be examined with care and caution particularly when parties are near relations and the dispute is over a passage on the land of the accused. PW-5 has admitted that the dispute is in relation to passage which was closed by his brother accused Karan Singh as the land fell into

his brother's share. He has further admitted that at the site of incident there are 8-9 houses and that immediately after the occurrence of the incident, Pradhan, Lambardar and Up-Pradhan reached at the spot and his wife came 15 to 20 minutes after all these persons had arrived. This statement of PW-5, however, is at variance with the statement of PW-6 who has stated that she had arrived prior to the arrival of the aforesaid persons. According to her, her house is at a distance of approximately 3 kms. and she had come from her house at the time of incident. She has admitted that her deposition is at variance with her statement recorded u/s 161 Cr.PC. According to her, she learnt about the incident at about 10 A.M. and she travelled for 3 kms. to reach the place of the occurrence. This fact is not recorded in her statement u/s 161 Cr.PC. Since she could not have been physically present on the spot at the time and place of occurrence, the story of the prosecution that PW-6 reached the spot and rescued the complainant and in this process was also beaten up by the accused persons is thus obviously false. At the time of occurrence of the alleged offence, her presence at the spot itself is doubtful. She had to walk 3 kms. to reach the spot. In this background, the sole testimony of PW-5 cannot be relied upon particularly when it has come through his statement that dispute pertained to the passage over a piece of land which did not belong to him and in fact belonged to his brother who is an accused.

In the present case after the recording of the FIR, the police did not get the accused medically examined. There is no explanation forthcoming as to why the accused himself went to the doctor and got himself medically examined. The statements of the said witness do not inspire confidence. There are vital contradictions and the case appears to be false.

In this view of the matter, it cannot be said that the prosecution has been able to prove the guilt of the accused beyond reasonable doubt. The accused have the benefit of being acquitted by the Court below. There is no perversity in the appreciation of the material.

For all the aforesaid reasons, I see no reason to interfere with the findings and conclusion of the Court below and the appeal is accordingly dismissed. Bail bonds stand discharged.

(Sanjay Karol),
Judge.

October 23, 2007
(rana)